



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DOVZHENKO v. UKRAINE

(Application no. 36650/03)

JUDGMENT

STRASBOURG

12 January 2012

FINAL

12/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dovzhenko v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Elisabet Fura,

Boštjan M. Zupančič,

Ann Power-Forde,

Angelika Nußberger,

André Potocki, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 December 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36650/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Sergey Ivanovich Dovzhenko (“the applicant”), on 11 October 2003.

2. The applicant was represented by Mr V. Dovzhenko, a lawyer practising in Mariupol. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. The applicant complained under Article 6 § 2 of the Convention that his right to be presumed innocent was not respected; under Article 6 §§ 1 and 3 (c) of the Convention that the proceedings before the Supreme Court had been held without the applicant’s lawyer; under Article 6 §§ 1 and 3 (b) of the Convention that he had not had sufficient time to study the materials of the case file for the proceedings before the Supreme Court; and under Article 8 of the Convention that the authorities had refused to dispatch his correspondence during his detention.

4. On 22 September 2009 the Court declared the application partly inadmissible and decided to communicate the above complaints to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Due to the absence of a national Judge at the relevant time, Mr M. Buromenskiy was appointed to sit as *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is currently serving a life sentence in prison.

A. Criminal proceedings against the applicant and related issues

6. On 19 May 2002 the applicant was arrested on suspicion of having committed a series of murders.

7. On 22 October 2002 the investigation was completed and the applicant started to study the case file. During the pre-trial investigation and the examination of the case file the applicant was assisted by a legal-aid lawyer.

8. On 7 November 2002 the applicant and the lawyer finished examining the case file in full.

9. On 8 September 2003 the Donetsk Court of Appeal, acting as a first-instance court (“the first-instance court”), found the applicant guilty of seventeen murders and other less serious crimes committed by him between 1999 and 2002 and sentenced him to life imprisonment with confiscation of property. During the trial the applicant was represented by the lawyer.

10. According to the applicant, following the judgment of 8 September 2003, he was not assisted by any lawyer despite his complaints to the first-instance court on this account.

11. On 2 October 2003 the applicant lodged with the Supreme Court a cassation appeal against the judgment of 8 September 2003.

12. On 17 September 2003, in the course of preparation to the proceedings before the Supreme Court, the applicant requested the first-instance court to familiarise him with the minutes of the hearings.

13. On 23 January 2004 the applicant started to examine the minutes of the hearings held by the first-instance court.

14. On 26 January 2004 the applicant submitted that he would continue examination of the minutes only after he had studied the case file one more time. He therefore requested that the case file be provided to him for examination.

15. On 2 February 2004 the first-instance court, having regard to the applicant’s statements, set a five-day period for him to examine the minutes of the hearings. Despite the fact that the applicant was invited on several occasions to continue studying the minutes of the hearings, he refused to do so, insisting that he needed to examine the case file first.

16. On 28 April 2004 the first-instance court found that the applicant had refused to familiarise himself with the minutes of the hearings for no

valid reason and allowed no further time to do so. The applicant was then provided with the case file.

17. On 16 July 2004 the first-instance court found that, despite having been provided with the case file on several occasions, the applicant had examined only two volumes of the file. As the file consisted of twenty-five volumes, the court concluded that the applicant's actions suggested that he had deliberately sought to draw out the time allowed for examining the case file. It set therefore a thirty-five-day time-limit for him to complete his examination of the case file.

18. During fifty-three days between July and September 2004 the applicant was provided with the case file. He managed to examine twelve volumes of the file.

19. On 28 September 2004 the first-instance court decided to allow no further time for the applicant to study the case file, as the relevant time-limit had expired.

20. On 7 April 2005 the Supreme Court held a hearing in the applicant's case. In his further submissions before the Supreme Court the applicant complained, *inter alia*, that there had been a lack of legal assistance and lack of time to study the case file.

21. The same day the Supreme Court, in the presence of the prosecutor and the applicant, who had not been represented by a lawyer, found that the applicant's guilt had been well founded and dismissed the applicant's appeal in cassation as unsubstantiated.

B. The reporting of the criminal proceedings against the applicant in the media

22. On 25 May 2002 a local newspaper, *Priazovskiy Rabochiy*, reported that the police had arrested the applicant on suspicion of a number of murders. It read, in particular:

“But the most sensational is the fact that the arrestee turned out to be former police lieutenant of the criminal investigation department, Sergey Dovzhenko. ...”

23. On 28 May 2002 another newspaper, *Salon Dona i Basa*, reported on a press conference held by K., the Head of the Mariupol Police Department. According to the newspaper, with respect to the progress of the investigation of series of murders K. announced that the police had arrested “a person who was reasonably suspected of having committed crimes with the use of a firearm” and then emphasised that it would be inappropriate to divulge any other information about the investigation.

24. On 8 June 2002 *Priazovskiy Rabochiy* provided a summary of another press conference given by K. on the subject of the applicant's arrest. The journalist reporting on the press conference referred to the detainee by his real name and provided some extracts from K.'s speech. In particular,

when opining as to who might have been the next victims of the detainee, K. was quoted as noting as follows:

“Those would be the police officers ... and others... But in this respect we can only trust in the words of the criminal ... And I have doubts about many of his statements...”

25. On 11 December 2002 the same journalist reported in *Priazovskiy Rabochiy* that the first hearing in the applicant’s case was to commence on that day. He noted that the police had always insisted that the applicant had acted without any accomplices, while in the latest press release M., the Head of the Donetsk Regional Police Department, expressed a different opinion. The journalist reported as follows:

“In the beginning of July [M.] stated in the official press release that Dovzhenko is just – quoting him word for word – ‘one member of a criminal group which committed a series of murders’...”.

26. The criminal proceedings against the applicant were further extensively reported on by the same journalist in a number of his publications, some of which contained pictures of the applicant.

27. On 4 June 2004 that journalist published an interview with the prosecutor, who commented on the procedural actions taken by the applicant after the judgment of the first-instance court.

28. In his submissions before the Supreme Court the applicant complained that his right to be presumed innocent had been affected by multiple newspaper articles reporting on the proceedings in his case, specifying further that in some of the articles State officials had clearly indicated that he had committed the murders, despite the fact that the proceedings were pending.

C. The applicant’s correspondence

29. On 5 November 2004 the first-instance court referred the case file to the Supreme Court, following which the applicant was refused permission by the officials of the detention facilities to send correspondence. The refusals were based on the fact that the written permit for the applicant’s correspondence, issued by the first-instance court, was no longer valid, while a new one had not been issued by the Supreme Court, which had become responsible for his case. The authorities acted on the basis of section 13 of the Pre-Trial Detention Act (see paragraph 33 below).

30. On 2 February 2005 and 1 March 2005 the applicant lodged two applications with the Supreme Court asking for such a permit to be issued, but to no avail. On 28 June 2005 the applicant could still not dispatch any correspondence.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure, 28 December 1960 (“the CCP”) as worded at the relevant time

31. The relevant provisions of the CCP read as follows:

Article 45. Compulsory participation of a defence lawyer

“Participation of a defence lawyer in the inquiry, pre-trial investigations and trial by the first-instance court shall be compulsory:

...(4) from the moment of the person’s arrest or when he or she is charged with a criminal offence carrying a penalty of life imprisonment ...

The participation of a defence lawyer in the proceedings before the court of appeal shall be compulsory in cases as provided by the first paragraph of this Article if the appeal raises issues capable of worsening the position of the convicted or acquitted person.”

Article 47. The procedure for selecting and appointing a defence lawyer

“A defence lawyer shall be selected by a suspect, an accused, a defendant or a convicted person ...

A defence lawyer shall be appointed [by the authorities] in the following cases:

(1) when, in accordance with Article 45 §§ 1 and 2, the participation of the defence lawyer is compulsory but the suspect, accused or defendant does not wish to or cannot appoint a defence lawyer;

(2) when a suspect, an accused or a defendant wishes to appoint a defence lawyer but cannot do so for lack of means or other objective reason. ...”

32. Article 395 of the CCP provides, *inter alia*, that the court of cassation shall review whether the challenged court decision is lawful and substantiated based on the case file and additionally submitted material. The scope of the review shall be limited by the arguments of the cassation appeal(s). The court shall be empowered to review the case beyond the arguments of the cassation appeal(s) provided that this does not worsen the position of the convicted or acquitted person.

B. The Pre-Trial Detention Act of 30 June 1993

33. Section 13 of the Act provides, *inter alia*, that a person held in custody may correspond with their relatives, other individuals and legal

entities upon obtaining a written permit from the authority dealing with the criminal case against the detainee concerned.

THE LAW

I. THE GOVERNMENT'S OBJECTION REGARDING *LOCUS STANDI*

34. In their further observations on the application the Government submitted that they had not received any documents confirming the authority of the applicant's lawyer. They maintained therefore that no submissions made by the applicant's lawyer could be accepted by the Court.

35. The Court notes that the applicant's lawyer was admitted to the proceedings on the basis of the power of attorney of 24 October 2009 which is available in the case file. On 5 November 2009 the Registry sent a copy of that power of attorney to the Government. The Court further notes that no submissions were made by the applicant's lawyer before the date of the power of attorney. In these circumstances the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

36. The applicant complained that the numerous newspaper articles outlining the proceedings against him amounted to a vicious media campaign, which was contrary to Article 6 § 2 of the Convention. Besides, the public statements of the law enforcement officers contained statements which were incommensurate with his right to be presumed innocent.

37. Article 6 § 2 of the Convention reads as follows:

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

38. The Government submitted that the applicant had failed to exhaust domestic remedies in so far as he had not applied to the editorial boards of the relevant newspapers requesting rebuttal of the divulged information. Neither had he lodged a civil suit claiming a violation of his honour and dignity by the impugned publications and seeking redress on this account.

39. The applicant claimed that the remedies invoked by the Government were not effective and therefore he had had no obligation to exhaust them.

40. At the outset, the Court notes that in so far as the applicant alleged that the journalists breached his right provided by Article 6 § 2 of the Convention by their numerous publications and expressions of opinion concerning the applicant's guilt, the Court notes that this complaint is inadmissible *ratione personae* since these actions were carried out by private persons and there is no indication that they should be attributable to the State. Moreover, the applicant has not availed himself of any domestic remedy in this respect (see *Bochev v. Bulgaria* (dec.), no. 73481/01, 20 March 2007).

41. As to the applicant's allegation that his right to be presumed innocent was breached by the public statements of the law enforcement officers, which were also quoted in the newspaper articles referred to by the applicant, the Court considers that this complaint falls within the scope of Article 6 § 2 of the Convention.

42. The Court has previously held that a complaint under Article 6 § 2 of the Convention cannot be rejected for the reason of non-exhaustion if an applicant raised that issue in the course of criminal proceedings against him (see *Shagin v. Ukraine*, no. 20437/05, §§ 71-73, 10 December 2009). As the applicant raised the matter before the Supreme Court (see paragraph 28 above), the complaint cannot be rejected on the grounds claimed by the Government.

43. The Court notes that this part of application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

44. The Government submitted that the public officials were very cautious in their statements when informing the public as to the proceedings against the applicant. This cautiousness was evidenced by the first press conference held by K., during which he merely disclosed that the detainee was "a person who was reasonably suspected of having committed crimes with the use of a firearm" (see paragraph 23 above).

45. As to the articles of 8 June and 11 December 2002, the statements of high-ranking police officers' contained therein could not be linked to the applicant in themselves as his name was not mentioned in the quotations. His name was mentioned outside the quotations by the journalist and not by the public officials. The Government also added that the interview with the prosecutor of 4 June 2004 did not contain any expressions encroaching upon the applicant's right to be presumed innocence.

46. The applicant disagreed.

47. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial

statements made in close connection with those proceedings. The right to presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It prohibits the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62) but also covers statements made by other public officials about pending criminal investigations which encourage the public to consider the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

48. It has been the Court’s consistent approach that the right to the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects the opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002, and *Nešták v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Karakaş and Yeşilirmak v. Turkey*, no. 43925/985, § 51, 28 June 2005).

49. Turning to the present case, the Court takes note of the Government’s contention that the quotations in the articles of 8 June and 11 December 2002 did not suggest that the high-ranking police officers called the applicant by his name. This, however, does not resolve the issue under Article 6 § 2 of the Convention, as the person concerned by a statement may be capable of being identified without his or her name having been mentioned (see *Peša v. Croatia*, no. 40523/08, § 146, 8 April 2010).

50. The Court notes that as early as 25 May 2002 the applicant’s name and other personal information about him had been disclosed by the press and had thus become known to the public (see paragraph 22 above). Moreover, given the gravity of the crimes of which he had been suspected

and the particular interest of the media in the case, the applicant's name must have been well-known to the public.

51. The Court therefore considers that the statement of the high-ranking police officers, as quoted in the articles of 28 May, 8 June and 11 December 2002, clearly concerned the applicant even without them having mentioned his name. Explicit references by the speakers to the name of the applicant in this case were not necessary to attract the guarantees of Article 6 § 2 of the Convention.

52. In assessing the contents of the expressions in question, it is sufficient for the Court to note that in the article of 8 June 2002 the detainee was referred to as a "criminal" without any reservation (see paragraph 24 above). Such a qualification, coming from a high-ranking police officer, came across as an established fact and amounted to a declaration of the applicant's guilt of the crimes in respect of which he was suspected. That statement prejudged the assessment of the relevant facts by the competent judicial authority and encouraged the public to consider the applicant guilty before he had been proved guilty according to law.

53. The foregoing considerations enable the Court to conclude that there has been a breach of the applicant's right to be presumed innocent. It therefore does not find it necessary to examine the other expressions in question and holds that there has been a violation of Article 6 § 2 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

54. The applicant complained that he had not been represented by a lawyer before the Supreme Court. He further complained that he had not had an opportunity to study all the materials in the case file to prepare for the hearing before the Supreme Court. The applicant relied on Article 6 §§ 1 and 3 (b) and (c) of the Convention which provide, in so far as relevant, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal"

3. Everyone charged with a criminal offence has the following minimum rights: ...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself ... through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

A. Admissibility

55. The Court notes that this part of application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Legal assistance to the applicant in the proceedings before the second-instance court

56. The applicant contended that his right to be legally represented before the Supreme Court had not been ensured by the domestic authorities.

57. The Government submitted that the first-instance court had sentenced the applicant to the severest punishment – life imprisonment with confiscation of property – and therefore the consideration of the case by the Supreme Court could not have resulted in an aggravation of his situation. Accordingly, by virtue of Article 45 § 2 of the Code of Criminal Procedure, the legal representation of the applicant before the Supreme Court (acting as a court of appeal in that case) was not compulsory. The Government further contended that the applicant was a former police officer and must have been able to present his defence by himself.

58. The Court notes that the requirements of paragraph 3 of Article 6 represent particular aspects of the right to a fair trial guaranteed in paragraph 1. It will examine the applicant's complaint under both provisions taken together (see, among many other authorities, *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I).

59. The sub-paragraph (c) of paragraph 3 of Article 6 attaches two conditions to a defendant's right to receive legal aid. The first, "lack of sufficient means to pay for legal assistance", is not in dispute in the present case. The only issue before the Court is therefore whether the "interests of justice" required that the applicant be granted such assistance free.

60. The Court reiterates that the manner in which Article 6 §§ 1 and 3 (c) is to be applied in relation to appellate or cassation courts depends upon the particular features of the proceedings involved; account must be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appellate or cassation court therein (see *Twalib v. Greece*, 9 June 1998, § 46, *Reports of Judgments and Decisions* 1998-IV, and *Granger v. the United Kingdom*, 28 March 1990, § 44, Series A no. 174).

61. The Court has already held that the situation in a case involving a heavy penalty where an appellant was left to present his own defence unassisted before the highest instance of appeal was not in conformity with

the requirements of Article 6 (see *Maxwell v. the United Kingdom*, 28 October 1994, § 40, Series A no. 300-C).

62. In the present case there is nothing to suggest that the applicant was assisted by any lawyer following his conviction by the first-instance court. It is undisputed that the hearing before the Supreme Court was held without any lawyer representing the applicant. However, the applicant's submissions before the domestic courts suggested that he wished to be legally represented at that stage of the proceedings.

63. The Government, relying on Article 45 § 2 of the CCP, contended that the applicant had not been entitled to compulsory legal representation at that stage of proceedings as he had been convicted to the heaviest penalty and his position could not be aggravated. This argument is immaterial for the Court, as even assuming that the applicant was not entitled to free legal assistance under the domestic law, the question is whether he was entitled to that assistance under the Convention.

64. According to the rules of criminal procedure (see paragraph 32 above), where a court of appeal acted as a first-instance court in criminal proceedings, the jurisdiction of the Supreme Court reviewing the case in cassation proceedings extended both to legal and factual issues. The Supreme Court also had the power to consider additional arguments which had not been examined in the first-instance proceedings. Given the seriousness of the charges against the applicant and the severity of the sentence imposed on him by the trial court, the Court considers that the assistance of a lawyer at this stage was essential for the applicant.

65. In these circumstances the Court finds that the interests of justice required that the applicant be legally represented before the Supreme Court. It holds, therefore, that there has been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 of the Convention.

2. Access to the case file with a view to preparation for the proceedings before the second-instance court

66. The applicant claimed that he was not given sufficient time to examine the case file in order to prepare for the proceedings before the Supreme Court. Given that he was not assisted by any lawyer, the exercise of his right to examine the case file was ineffective and time-consuming.

67. The Government maintained that the applicant had been provided with sufficient time to study the case file. After the authorities found that the applicant was abusing his procedural rights, they set a thirty-five day time-limit for examining the case file, which was reasonable taking into account the fact that the applicant had earlier examined the case file in full when preparing for the trial, and the only new material at the stage of appeal was the minutes of the hearings held by the trial court. In the Government's opinion the applicant had been abusing his procedural rights and had attempted to delay the proceedings against him.

68. The Court notes that at the pre-trial stage the sixteen-day period was sufficient for the applicant to study the whole case file with the assistance of a lawyer (see paragraphs 7 and 8 above). However, at the stage of appeal more than fifty-three days turned out to be insufficient for the applicant to study even half of the same material without a lawyer (see paragraphs 17-19 above).

69. The Court therefore considers that in the circumstances of the present case the real issue is not about the insufficiency of time in studying the case file but about the lack of legal aid at that stage of the proceedings. This point has been emphasised by the applicant himself in his submissions under this head. Indeed, even a very generous time-limit for analysing the complicated legal material contained in the case file might not have counterbalanced the lack of legal assistance in examining that material by the applicant.

70. Given that the matter of absence of legal assistance at that stage of proceedings has been examined above under Article 6 §§ 1 and 3 (c) of the Convention, the Court does not discern any separate issue under Article 6 §§ 1 and 3 (b) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

71. The applicant complained that he had not been allowed to dispatch any correspondence in the period when his case had been referred to and considered by the Supreme Court. He relied on Article 10 of the Convention.

72. The Court decided to examine the complaint under Article 8 of the Convention which provides the following:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

73. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

74. The Government submitted that on 10 February 2005 the Supreme Court received one of the applicant's requests for a permit for correspondence. They did not provide any further comments on the matter.

75. The applicant maintained his complaint.

76. The Court notes that the officials of the detention facilities refused to dispatch the applicant's correspondence for at least six months. The refusal amounted to an interference with the applicant's right to respect for his correspondence, which is guaranteed by paragraph 1 of Article 8 of the Convention.

77. The Court further notes that such an interference will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve them. The expression "in accordance with the law" does not only necessitate compliance with domestic law, but also relates to the quality of that law. The domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see *Sergey Volosyuk v. Ukraine*, no. 1291/03, §§ 81 and 82, 12 March 2009).

78. In the present case the refusal to dispatch the applicant's correspondence was based on the fact that the Supreme Court had not issued a relevant permit to the applicant, as provided by section 13 of the Pre-Trial Detention Act (see paragraph 33 above). The Court notes that the applicable provision of the domestic law does not oblige the competent authority to adopt a formal decision on the request, give reasons for such a decision or provide a copy thereof to the detainee concerned. Nor does that provision lay down a specific remedy enabling the detainee to contest the action or omission by the relevant authority. It appears therefore that due to the lack of these important procedural safeguards the applicant's requests for a correspondence permit could remain unanswered or refused for no valid reason. The lack of the abovementioned guarantees is all the more disconcerting given that the domestic law, as a general rule, prohibits correspondence and obliges pre-trial detainees to seek a permit as an exception thereto, rather than respecting, in principle, a detainee's right to correspondence and ensuring that any interference therewith is provided by and is in accordance with law.

79. In the light of the foregoing considerations, the Court concludes that the applicable domestic law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in issuing permits for correspondence to detainees. It follows that

the interference complained of was not “in accordance with the law”. The Court therefore does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with and holds that there has been a violation of that provision.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

81. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account (see, for example, *Haidn v. Germany*, no. 6587/04, §115, 13 January 2011).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
4. *Holds* that there is no need to examine the applicant’s complaint under Article 6 §§ 1 and 3 (b) of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention.

Done in English, and notified in writing on 12 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President